

**STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT**

IN THE MATTER OF: KERY S. HUTNER

FILE NO. 1100194

**CONSENT ORDER OF  
WITHDRAWAL OF APPLICATION**

TO THE RESPONDENT:

Kery S. Hutner (CRD #:2631738)  
3186 Richmond Road  
Beachwood, Ohio 44122

Kery S. Hutner (CRD #: 2631738)  
C/o Scott M. Murray, Esq.  
Senior Counsel Wells Fargo Law Department  
One North Jefferson Avenue Mail Code: H0004-123  
St. Louis, Missouri 63103

WHEREAS, Respondent on the 22<sup>nd</sup> day of August, 2011 executed a certain Stipulation to Enter Consent Order of Withdrawal of Application (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Corrected Notice of Hearing of the Secretary of State, Securities Department, dated April 19, 2011 in this proceeding (the "Corrected Notice") and Respondent has consented to the entry of this Consent Order of Withdrawal of Application "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Corrected Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That on March 10, 2011, Wells Fargo Advisors, LLC. a registered dealer, filed a Form U-4 application for registration of the Respondent as a salesperson in the State of Illinois pursuant to Section 8 of the Act.

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2. That on January 31, 2002 an Exchange Hearing Panel of the New York Stock Exchange Inc. (NYSE) accepted a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and the Respondent (Decision) in File No. 02-27 which imposed the following sanctions:
  - a. censure; and
  - b. suspension for a period of two months from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.
3. That the Decision found:
  - a. During the period April to July 1999, the Respondent caused an individual to open an account with his member firm employer so that he could trade initial public offerings and share in the profits of the account without reflecting the account's true beneficial ownership. He also processed a change of address for the customer without authorization and caused a check from the customer's account to be mailed to his own address, as set forth below.
  - b. In or about April 1999, the Respondent arranged for Ms. A to open an account at the Firm in her own name so that the Respondent and his brother could trade initial public offerings ("IPO"). At that time, Ms. A, who had no prior investment experience and had never traded IPOs, was the fiance of the Respondent's brother.
  - c. On or about April 6, 1999, Ms. A opened an account with the Respondent at the Firm. Ms. A's new account form listed her occupation as executive assistant and age as 29 years. Ms. A's annual income and net worth were both listed as \$33,000 and her investment objectives were noted as income, aggressive income, capital appreciation and speculation. The new account document for Ms. A did not list any prior investment experience.
  - d. On or about May 26, 1999, the Respondent issued a check to Ms. A in the amount of \$450. These funds were primarily used to purchase IPOs in Ms. A's account.
  - e. Ms. A deposited the funds she received from the Respondent into her personal checking account and then wrote her own check, which she deposited into her Firm account.

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- f. During the time the Respondent serviced Ms. A's account, he effected three IPO transactions in the account, all of which were purchased at the offering price and all of which earned a profit, as follows (these were the only securities transactions in the account):

Date	Shares/IPO	Purchase Price	Date Sold	Sale Price	Days Held	Profit	% Gain
4/14/99	50/XYZ	850	4/19/99	2,762.50	5	1,912.50	225%
5/18/99	25/UVW	525	5/18/99	1,750.00	0	1,225	233%
5/28/99	50/RST	950	7/2/99	4,446.01	34	3,496.01	368%
Total		2,325		8,958.51	13 (average)	6,633.51	285.3%

- g. The three IPOs traded in Ms. A's account were so called "hot issues" which, according to Firm policy, the Respondent would not have been allowed to trade in his own account at the public offering price.
- h. In or around June 1999, Ms. A's engagement to Hutner's brother ended and she ceased communicating with her former fiancé. Shortly thereafter, the Respondent contacted Ms. A and suggested that she sell the open position in her account and gives him his share of profits from the IPO trades. Ms. A agreed, on the condition that she receives sufficient funds to pay all the taxes due on the profits from the IPO trades.
- i. On or about June 29, 1999, the Respondent instructed the Firm's cashier to change Ms. A's address from her address to his personal residence.
- j. On or about July 2, 1999, the Respondent caused a check from Ms. A's account in the amount of \$4,471.01 to be mailed to his residence, which he then delivered to Ms. A for her endorsement. Ms. A endorsed the check and gave it back to Hutner. At this time, the Respondent gave Ms. A \$450 in cash in partial payment for the taxes she would incur on the profits from the IPO trades.
- k. Ms. A decided that the amount given to her by the Respondent for taxes was not sufficient and she stopped payment on the Firm check that he had brought her and had a replacement check issued by the Firm, which she picked up in person.

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- l. In or around July 1999, Ms. A gave Hutner a cashier's check in the amount of \$1,521.01.
- m. That by virtue of the foregoing, the respondent:
  - i. Engaged in conduct inconsistent with just and equitable principles of trade in that he failed to disclose an ownership interest in a securities account, and caused the address of a customer account to be changed to his own address without authorization;
  - ii. Violated Exchange Rule 352(c) by agreeing to share in the profits in a customer's account;
  - iii. Violated Exchange Rule 409(b) by causing a check from a customer's account to be sent to his own address ;
  - iv. Violated Exchange Rule 440 and SEC Regulations 240.17a-3 and 17a-4 by causing a customer's address to be inaccurately reflected on the books and records of his member firm employer; and
  - v. Caused a violation of Exchange Rule 406 by causing his member organization employer to carry an account without reflecting the true beneficial ownership.
4. That Section 8.E (1)(j) of the Act provides, inter alia, that the registration Of a salesperson may be denied if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self regulatory organization.
5. That NYSE is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.

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WHEREAS, by means of the Stipulation, the Respondent acknowledged that the Secretary of State made the following additional Finding of Fact:

That the Respondent withdrew his application for registration as a salesperson in the State of Illinois on April 21, 2011.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting nor denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

That by virtue of the foregoing, the Respondent's application for registration as a salesperson in the State of Illinois is subject to denial pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he will not re-apply for registration as a salesperson in the State of Illinois for a period of two (2) years from the entry of this Consent Order.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall be levied costs incurred during the investigation of this matter in the amount of Five Hundred dollars (\$500.00). Said amount is to be paid by certified or cashier's check, made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he has submitted with the Stipulation a certified or cashier's check in the amount of Five Hundred dollars (\$500.00) to cover costs incurred during the investigation of this matter. Said check has been made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

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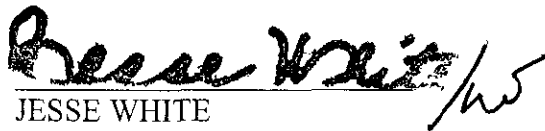
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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. The Respondent will not re-apply for registration as a salesperson in the State of Illinois for a period of two (2) years from the entry of this Consent Order.
2. The Respondent is levied costs of investigation in this matter in the amount of Five Hundred dollars (\$500.00) payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund, and on August 22, 2011 has submitted Five Hundred dollars (\$500.00) in payment thereof.
3. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED This 24<sup>th</sup> day of August 2011.

  
JESSE WHITE  
Secretary of State  
State of Illinois

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